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SUBJECT: TURKEY'S TERRORISM LAWS: UNORTHODOX BUT WORKABLE

¶1. (SBU) SUMMARY: During recent extended discussions with Turkish Ministry of Justice (MOJ) officials, we reviewed Turkey's legal framework for prosecuting terrorism activities. In response to our concern that Turkey's current terrorism law too narrowly focuses on domestic terrorism and does not cover terrorist attacks against non-Turkish targets, MOJ officials contend they have adequate authorities now to prosecute a wide range of terrorism acts, including attacks on non-Turkish targets, financing and accessory liability, and that no legislative changes are needed. MOJ official say they can do this by using other Turkish laws, international conventions, and U.N. Security Council resolutions. The MOJ provides regular briefings on these issues to Turkey's eight High Penalty Court prosecutors to ensure that they are aware of how to prosecute terrorist crimes. END SUMMARY.

¶2. (SBU) In July the U.S. Department of Justice's (DOJ) Resident Legal Advisor and officials in the Ministry of Justice's (MOJ) General Directorate of International Law and Foreign Affairs discussed Turkey's ability to address various terrorism acts which might not be specifically defined as terrorism under existing Turkish legislation. We offered several hypothetical situations and discussed how they could be prosecuted. (NOTE: Turkey was one of the few states to define terrorism prior to September 11, 2001. Its main legal provisions are set forth in its 1991 anti-terrorism law, and a 2005 provision in the Turkish Criminal Code. The main elements prohibit acts by organizations which aim to change "the constitution, its political, legal, social, secular and economic system; damage the indivisible unity of the State with its territory and nation; or endanger the existence of the Turkish State and Republic" - that is, an almost exclusively internal focus. END NOTE)

Anti-terrorism law not the sole resource  
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¶3. (SBU) MOJ officials said the anti-terrorism law is not the sole resource for prosecuting terrorist crimes. The over-arching legal tool is Article 90 of the Turkish constitution which mandates that all international treaties and conventions ratified by Turkey have the force of domestic law and take precedence over any conflicting domestic law. The MOJ relies on this core legal principle when determining the existence of a terrorism crime under Turkish law. Turkey is a signatory to all 12 international terrorism conventions.

¶4. (SBU) In addition to international instruments, the MOJ uses various codes, laws, regulations and circulars promulgated by the government to determine which laws apply and how charges can be filed for terrorist activities. While numerous specific terrorist actions taken from international conventions have been specifically

criminalized under the Turkish penal code, many have not.

15. (SBU) The fact that the various mandates found in the 12 conventions and many European treaties are not set forth specifically in Turkish law creates the possibility of inconsistent application in prosecution. However, MOJ prosecutors insist that it does not/not mean that terrorist activity not found within the scope of the anti-terror law cannot be prosecuted. We asked MOJ official to explain how different types of terrorist acts would be prosecuted.

Actors inside Turkey  
committing terrorism acts outside Turkey  
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16. (SBU) Terrorists plotting in Turkey to commit acts outside of Turkey are covered by Article 13 of the Turkish Penal Code, which extends extraterritoriality in "International Offenses." This article extends Turkish jurisdiction over offenses committed outside of Turkey whether committed by a Turkish citizen or non-Turkish citizen.

17. (SBU) In this scenario, our MOJ interlocutors would explore whether they could define the activity as terrorism under their domestic anti-terrorism law or any of the 12 terrorism-related treaties. If yes, Turkey could assert jurisdiction over the crime. If no, the prosecutor would look to see if the actors belong to, or are acting on behalf of a group that is listed as a terrorist organization in any international convention or addendum within United Nations Security Council Resolutions. If the actor is not a member of the organization, but is acting on behalf of the organization, he is liable for his actions pursuant to Article 2 (1) of Turkey's anti-terror law.

Membership in an organization  
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18. (SBU) Although the Turkish anti-terror law specifies that an organization be the terrorist actor, individuals can also be prosecuted. If an individual commits a terrorist act while acting on his/her own, Article 2, paragraph 2 of the Prevention of Terrorism Law applies. Under this article, an individual who commits a terrorist act on behalf of a terrorist group -- even though he is not a member -- will be sentenced as if he/she were a member. The Turkish penal code specifically incorporates a number of crimes set forth in UN conventions as terrorist acts (such as kidnapping, torture, human smuggling, etc.) and states that "anyone" who commits such acts shall have committed a terrorist act. However, an individual who is not associated with a terrorist organization, but commits violent crimes as a self-designated terrorist (such as killing, maiming, torturing, kidnapping, etc.) could be charged under the Turkish criminal code applicable to such acts -- and not as a terrorist -- to simplify the prosecution.

Accessory liability  
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19. (SBU) An actor in Turkey who provides assistance to a terrorist organization or actor outside of Turkey (e.g. by sending a map), knowing that he or she is assisting by providing the necessary direction for a terrorist attack, can be prosecuted in Turkey. Turkish Penal Code Article 8 (1) stipulates that Turkish law shall apply to all criminal offenses committed in Turkey and that "[w]here a criminal act is partially, or fully, committed in Turkey...the act shall be presumed to have been committed in Turkey."

Terrorist Financing  
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10. (SBU) We suggested two terrorism financing scenarios. First, a Turkish national outside of Turkey who aids terrorist organizations in order to fund terrorist operations aimed at non-Turkish interests outside of Turkey. Such an individual can be prosecuted. The MOJ would look to Article 13 of the Turkish penal code giving Turkey jurisdiction over Turkish nationals who commit crimes outside of Turkey. The act of terrorism financing is set forth in the International Convention for the Suppression of the Financing of Terrorism, Article 2, 5 (a), (b) and, (c) and under Turkey's

constitution, becomes Turkish national law.

¶11. (SBU) In our second example, Turkish nationals in Turkey pay a terrorist organization for housing a suicide bomber's family. Turkish terrorist finance law does not directly address this crime, but the Convention for the Suppression of the Financing of Terrorism would apply. Prosecutors would also examine the terrorist organization to which assistance was given. If it is included on UN lists, Turkish nationals could be prosecuted directly under the Turkish Counter-terrorism law.

¶12. (SBU) Finally, we asked if Turkey could extradite those who aided in terrorist financing if the financing in question was not a crime under Turkey's terrorism laws. Based upon the Convention for the Suppression of Terrorism and its application as Turkish domestic law, the acts should be regarded as terrorist financing crimes and, therefore, extraditable offences as set forth in the same convention. MOJ officials stated emphatically that they make every effort to render assistance to a requesting country in terrorism extradition requests. However, Article 38 of the Turkish Constitution proscribes the extradition of a Turkish citizen. Also those who commit crimes in Turkey must complete whatever sentence they face in Turkey before being extradited to another state.

#### Practical Implementation of Conventions, Agreements

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¶13. (SBU) Turkey's Eight High Penalty Court Prosecutors are responsible for bringing terrorism charges under Turkish law and the international conventions. Although these prosecutors are independent and responsible for developing their own cases, they are required to seek guidance from the MOJ's General Directorate for International Law and Foreign Affairs for all matters related to international law. According to MOJ officials, this directorate provides regular and specific training, and seminars and meetings on the various conventions and anti-terrorist legislation. The MOJ said it also provides circulars setting forth practical instructions on how to implement the instruments, much like the Department of Justice's "USA Bulletins."

¶14. (SBU) MOJ officials are adamant that if a situation arises, they will be able to invoke the applicable international convention to prosecute terrorists. They argued that, while amendments to the terrorism law might be preferable, the process of changing a piece of domestic legislation is complex, and the result might not be the desired outcome. When laws are amended in Turkey, it invariably leads to problems in Parliament because of the nature of the amendment process and the tendency of opposition parties to turn this process to their political advantage. "Of course we will amend our law if it is shown to be deficient, but to date it is not," one high-level MOJ official told us. "We can use the 12 conventions to cover any and all (eventualities)." In addition, the limits of the revised terrorism law have not been tested in any specific case, so it is harder to convince legislators that a change must be made.

#### Comment

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¶15. (SBU) The bottom line is that Turkish prosecutors believe they can use not only the terrorism law, but also a host of other domestic and international laws and conventions to prosecute any type of terrorism case. Rather than focusing our energies on seeking broad amendments to the law and forcing a parliamentary debate on the definition of terrorism, we believe that a more effective course would be to work with the MOJ to propose a series of "technical" amendments to improve the efficiency of the law's implementation. The Ankara RLA Office has already begun these discussions with the MOJ.